Supreme Court, U.S.
FILED

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

STANLEY MA, JENNY TONG, WAI K. CHOI,

Petitioner

v.

CHARLES W. BROWN, JANNETTE BROWN,

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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83 pp

QUESTIONS PRESENTED

1. Whether Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case *In re Lund*?

2. Whether Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case *Grogan v. Garner*?

3. Whether Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case *In re Chalik*?

4. Whether Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case *In re Mazzola*?

5. Whether Court of Appeals For The Ninth Circuit Erred In Ignoring Of Cases *U. S. v. Kras*;
In re Tabibian;
In re Lee; *In re Eisan*; etc.?

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D - Appellant's Excerpts of Record submitted to Court of Appeals for the Ninth Circuit

E - Appellant's Opening Brief submitted to Bankrupty Appellat Panel of the Ninth Circuit

F - Appellant's Excerpts of Record submitted to Bankruptcy Appellate Panel of the Ninth Circuit

Petitioners pray that a writ of certiorari be issued to review the memorandum of the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") filed on May 20, 1998.

The decision of the Ninth Circuit was erroneous in the resolution of an important and recurring issue significantly affecting the administration of justice.

Petitioners/Plaintiffs will be refer-red to herein as "Plaintiffs" and Respondents/Defendants as "Defendants".

OPINIONS BELOW

The Memorandum of the Ninth Circuit in the instant case was filed on May 20, 1998 and is printed in Appendix A.

The Memorandum of the Bankruptcy Appellate Panel of the Ninth Circuit (" BAP") in the instant case was filed on August 30, 1996 and is printed in Appendix B.

The "Appellants' Opening Brief" and the "Excerpts of Record" submitted to Ninth Circuit are printed in Appendixes C, D.

The "Appellants' Opening Brief" and the "Excerpts of Record" submitted to BAP are printed in Appendixes E, F.

JURISDICTION

The Memorandum of the United States Court of Appeals for the Ninth Circuit was filed on May 20, 1998. The jurisdic-tion of this Court rests on 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 11 U.S.C. Section 523:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit to the extent obtained by -
>
> (A) false pretense, a false

representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. Section 727(a)(4)(A):

(a) The court shall grant the debtor a discharge, unless -

(4) the debtor knowingly and fraudulently, in or in connection with the case -

(A) made a false oath or account.

STATEMENT OF THE CASE

A. Procedural History:

1. On or about December 24, 1996, the "Appellants' Opening Brief" and the "Excerpts of Record" were submitted to the Ninth Circuit (Appendixes C, and D).

2. On May 20, 1998, the Ninth Circuit's "Memorandum" was filed (Appendix A).

B. Statement of Facts

1. Defendants filed a Chapter 7 Petition in 1983.

2. Defendants had falsely and fraudu-lently stated their incomes as follows when they applied for renting of plain-tiffs' house - -

a) Charles W. Brown, $2,900.00 a month;

b) Janette Brown, $6.00 per hour; and

c) Other income, $400.00 per month while they actually had incomes as follows:

i) $25,000.00 in 1992 (i.e., $2,083.33/Month);
ii) $29,000.00 in 1993 (i.e., $2,416.66/Month);
iii) $24,000.00 in 1994 (i.e., $2,000.00/Month).

3. Defendants had knowingly, repeated-ly, and maliciously given false informa-tion on their "Tenant Application" Form.

4. Defendants had falsely and fraudu-lently obtained their utilities by using

the name of Gregory Burns, who was/is a 6-year old child.

5. Defendants had falsely stated the cost of their residence, wich was a mail box, renting was $1,050.00 per month.

6. Defendants had listed their income of $2,400.00 per month while defendant Charles Brown's ("Brown") employer stated his income was $722.92 weekly.

7. Defendants had repeatedly written checks with no money in the account.

8. On August 4, 1994, defendants were evicted from the premise by the Los Angeles Sheriff after defendants did not respond to the Complaint.

9. On August 12, 1994, Money Judgment was awarded by the State Court to plaintiffs.

10. On August 26, 1994, defendants made an Agreement with plaintiffs promising to pay $400.00 or more per month for the money

judgment.

11. On September 6, 1994, the Pomona Municipal Court ordered defendants to pay damages in the amount of $515.00 caused by defendants. The judgment was affirmed by the Los Angeles Superior Court, Pomona Branch, after defendants' appeal.

12. Defendant Charles W. Brown's Employer - Lucky Stores, Inc. - was served the "Writ of Execution (Money Judgment) and the "Application for Earings Withhold -ing Order" after defendants failed to pay the monthly payments as promised.

13. Defendants had knowingly and fraudulently used their mailing address (?) as residence street address.

14. Defendants filed their Chapter 7 Petition after the Orange County Marshal was garnishing defendant Charles W. Brown's wage and after defendants failed to keep their promises.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case In re Lund

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In re Lund (9th Cir. BAP, 1996) 202 BR 127, 130, the court held that:

> "If the debtors made false representation regarding payments for the purposes of inducing Kuan to permit them to stay longer without paying rent, then the debtors obtained Property (Possession of the house without presently making rent payment) through false pretenses, a false representations, or actual fraud within the meaning of 11 U.S.C. Section 523 (a)(2)(A)."

In the instant case, defendants knew the monthly rent was $1,250.00. Defendants knew the minimium income to qualify for renting the house should be, at least, $3,750.00 (1250 x 3). Defendants also knew their incomes of $25,000.00/year were not enough to pay the rent and other living expenses. The fact as stated in Appendixes C and E and evidence as present

-ed in Appendixes D and F clearly show defendants obtained property through false pretense, a false representation or actual fraud. Thus, the Ninth Circuit erred in affirming the "BAP's" decision when "BAP" itself had held in its "Memorandum" (Appendix B), page 8, lines 3 - 5, that DAMAGES - - such as unpaid rent - - may be non-dischargeable when possession of the property is obtained by misrepresen -tation.

2. The Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case Grogan v. Garner

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In Grogan v. Garner, 498 U.S. 279, 286-287, 111 S.Ct. 654, 659, the Supreme Court held that the "fresh start" is a Central purpose of the (Bankruptcy) Code, this opportunity is limited to the "**honest but unfortunate debtor**".

In the instant case, defendants had

filed a Chapter 7 Bankruptcy petition in 1983. Again, defendants had failed to restrain themselves from injuring plaintiffs when defendants willfully, falsely, and fraudulently filled out the "Tenant Application" Form with fictitious and inflated information to obtain possession of plaintiffs' house (Appendixes C, E).

Moreover, defendants knew they did not have any intention to pay the state court's judgments when defendants signed the Agreement with plaintiffs and falsely promised to pay $400.00/monthly in order to delay defendants' filing of another Chapter 7 Bankruptcy petition.

A fact and evidence have shown defen-dants were/are not honest people, the Ninth Circuit erred in ignoring the case Grogan v. Garner to affirm the "BAP's" decision.

3. The Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case In re Chalik

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In re Chalik 748 F2d 616, 617, the Bankruptcy Court held that:

> "This Circuit has also said that a discharge pursuant to 11 U.S.C. Section 727 (a)(4)(A) should not be granted when the debtor knowing -ly and fraudulently made a false oath or account in connection with the Bankruptcy Proceeding (In re Raiford, 695 F2d 521, 522 (4th Cir. 1983) at 618.

The Chalik court in affirming Bankruptcy Court's denial of **Chalik's** discharge, stated that We glean further support from decisions of several circuits holding that detriment to the creditor need not be shown in order to bar discharge for making a false oath (Farmers Co-Operative Asso. v. Strunk 671 F2d 391, 395 (10th Cir. 1982) - A knowing and fraudulent omission from a sworn Statement of Affairs or Schedules may

constitute a false oath).

In the instant case, defendants knew 382 North Lemon, Walnut, CA 91789 was a commercial mail box number, **not a resident address and had never lived at that place.** Yet, defendants not only wrote the number on the "Tenant Application" Form, defendants had also written that address on defendants' Chapter 7 Petition.

Since defendants had made false oath and account on their Chapter 7 Bankruptcy petition, thus, the Ninth Circuit erred in ignoring the case In re Chalik to affirm the "BAP's" decision.

4. The Court of Appeals For The Ninth Circuit Erred In Ignoring Of The Case In re Mazzola

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In re Mazzola 4 B.R. 179 (1980), the court held that in view of the fact that the schedules and statement of affairs filed by the debtors contained numerous false statements and that in view of

evidence indicating that the statements were made with a calculated disregard for the importance of documents signed under penalty of perjury, the debtors were not entitled to a discharge; their reckless disregard for the truth was the equivalent of the fraudulent intent necessary to bar discharge.

In plaintiffs' "List of Trial Exhibits" and defendants' "Schedules and Statement of Financial Affairs" contained in Appendixes D and F, plaintiffs had presented ample evidence supporting plaintiffs' assertions that defendants had repeatedly, willfully, falsely, and fraudulently submitted fictitious and inflated debts and claims.

Since defendants had made false oaths and account and defendants' reckless disregard for the truth was the equivalent of the fraudulent intent, thus, the Ninth

Circuit erred in ignoring the case In re Mazzola to affirm the "BAP's" decision.

5. The Court of Appeals For The Ninth Circuit Erred In Ignoring Of Cases U. S. v. Kras; In re Tabibian; In re Lee; In re Eisan; etc.

In Benjamin Weintraub and Allen N. Resnick's Bankruptcy Law Manual, 3rd Ed., Warren, Gorham & Lamont, P. 3 - 13 (4)(a):

Knowingly and Fraudulently Making A False Oath Or Account -

> "If a debtor intentionally makes a false statement under oath, whether in the Petition, Schedules, Statements, or testimony, the debtor may later find that a discharge will not be granted."

In U. S. v. Kras 409 US 434, 446 (1973), the Supreme Court held that:

> "there is no constitutional right to obtain a discharge of one's debts in Bankruptcy."

In re Tabibien 289 F2d 793, 795 (2d Cir. 1961), the court held that:

> "It is true that a discharge is a

> privilege granted the honest debtor and not a right accorded all bankrupts".

In re Lee 186 B.R. 695, 699 (9th Cir. BAP 1995), the Court held:

> "Mere failure to fulfill a promise to pay debts is dischargeable; unless the debtor made the promise while knowing that payment would be impossible."

As shown on the "Tenant Application" and defendants' Schedules, defendants had no ability to pay rent. Yet, defendants falsely stated that his wage and other payments could meet the rent payments. In the instant case, plaintiffs had proved defendants made material misrepresentations.

In re Eisan (9th Cir. 1994) 14 F3d 469, the Court held:

> "Bad faith exists in connection with Chapter 13 filing, where debtor intended only to defeat state court litigation."

In re Chinichian (9th Cir. 1986) 784

F2d 1440, 1445, the Court held:

> "Bad faith exists where the debtor only intended to defeat state court litigation."

In the instant case, after plaintiffs were awarded judgments by the Pomona Municipal Court, after defendants signed the Agreement with plaintiffs and promised to pay the judgments, and after defendant Charles Brown's wage was garnished, defendants filed their another Chapter 7 Bankruptcy petition. These facts can show defendants would not file their Chapter 7 petition if defendant Charles Brown's wage was not being withheld. Since defendants' purposes were to defeat the State court's judgments, the Ninth Circuit erred in ignoring the afore-cited cases to affirm the "BAP's" decision.

CONCLUSION

In re Kim 163 B.R. 157 (9th Cir.

BAP 1994), the court held that when statute's language is plain, sole function of courts is to enforce it according to its terms.

It is clear that 1) debts of defendants are non-dischargeable, because defendants obtained the property by false pretense and false representation, 2) debts of defendants caused by their will-ful and malicious acts and conduct are non-dischargeable, and 3) debtors should be denied a discharge because defendants had knowingly, falsely, and fraudulently made oath and/or account in their Chapter 7 Petition.

Under "Equal Protection of Law" and in the interest of justice, Petitioners respectfully request that a Writ of Certiorari be issued to review the Court of Appeals for the Ninth Circuit's

Memorandum and the "Memorandum of the "BAP" and to vacate the Bankruptcy Court's judgment, based the cases cited and evidence presented, so that defendants cannot abuse the Bankruptcy protection to cause damages to other people.

Dated: August 3, 1998

Stanley Ma, Wai K. Choi, Jenny Tong
Petitioners Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CHARLES W. BROWN; JANETTE BROWN, Debtors.	No. 96-56460 BAP No. CC 95-2149-A1JH
STANLEY MA, JENNY TONG, WAI K. CHOI, Appellants, v. CHARLES W. BROWN ; JANETTE BROWN,	MEMORANDUM* FILED MAY 20, 1998 CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Jones, Hagan, and, Judges, Presiding

Submitted May 14, 1998**

Before: SCHROEDER, TROTT, and FERNANDEZ, Circuit Judges.

Stanley Ma, Jenny Tong and Wai Choi, former landlords to debtors Charles and Janette Brown, appeal **pro se** from a decision of the Ninth Circuit Bankruptcy

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Appellate Panel ("BAP"). The Bap affirm -ed the judgment of the Bankruptcy Court that the landlords' state court judgemnt against the Browns are dischargeable. For the reasons stated by the BAP, we affirm.

AFFIRMED.

** The panel unanimously finds this case suitable for decision without oral argument. see Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

UNITED STATES BANKRUPTCY APPELLATE

PANEL OF THE NINTH CIRCUIT

In re: CHARLES W. BROWN and JANETTE BROWN,	BAP No. CC 95 -2149-A1JH
Debtors.	BK. No. LA 94 -48370-ER
STANLEY MA, JENNY TONG, and WAI K. CHOI,	Adv. No. LA 95 -95-01187-ER
Appellants,	MEMORANDUM
v.	FILED AUG 30, 1996
CHARLES W. BROWN and JANETTE BROWN,	NANCY B. DICKERSON
Appellees.	CLERK, U. S. BKCY. APP.PANEL OF THE NINTH CIRCUIT

Submitted on July 24, 1996
at Pasadena, California

Appeal from the United States
Bankruptcy Court for the
Central District of California

Honorable Ernest M. Robles, Bankruptcy
Judge, Presiding

Before: ALLEY[1], HAGAN and JONES,
Bankruptcy Judges.

This case is a landlord-tenant

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1 Hon. Frank R. Alley, III, Bankruptcy Judge for the District of Oregon, Sitting by designation.

dispute which has continued through the debtor/tenants' bankruptcy. The landlords appeal from a judgment of the Bankruptcy Court that their state court judgments against debtors are discharge -able. While our reasons vary somewhat from the trial court's we affirm the judgment.

I. FACTS

The debtors, Charles and Janette Brown, were residential tenants of the appellants, Stanley Ma, Wai Choi, and Jenny Tong. The debtors became delinquent on their rent and were served with notices requiring that they apy the rent or leave the premises. Shortly thereafter, the appellants filed an unalwful detainer action against the debtors in Los Angeles Municipal Court, Pomona Judicial District, alleging unpaid rent, damages to property and costs totaling

$3,285.45. The debtors failed to attend the hearing in municipal court and a default judgment was entered against them in the amount prayed for in August 12, 1994. After the judgment was entered the debtors signed an undated agreement with the appellants to pay off the judgment at $400.00/month begining September 30, 1994. The agreement did not provide any consideration, or restrain the creditors from executing on their judgments or taking other steps to collect it.[2] The debtors filed their Chapter 7 bankruptcy petition on October 25, 1994.

Appellants filed a complaint in the Bankruptcy Court alleging that the debt owed to them is nondischargeable under Bankruptcy Code Sections 523(a)(2)(A) and

2 The only undertaking by Appellants in the agreement was that they would satisfy the judgment when it was paid, something they were legally obligated to do in any event.

(a)(6).[3] They alleged that the debtors falsely represented their incomes and other information on their rental application, thus causing the appellants to rent the property to them (Section 523 (a)(2)(A)). They also alleged that the damage to their rental property was caused by the willful and malicious actions of the debtors (Section 523(a)(6)). At trial, the appellants filed exhibits and both sides gave testimony.[4]

In finding for the debtors, the court ruled from the bench that:

1. The default judgment obtained by the appellants in municipal court did not establish the fraud requirement of

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3 Unless otherwise indicated, all references to "chapter" or "section" are to the United States Bankruptcy Code, 11 U.S.C. Sections 101-1330.

4 In their complaint, the appellants alleged damages in excess of $6,000 for unpaid rent and damage to property.

Section 523 (a)(2)(A).

2. There were no representations made by the debtors, on which the appellants relied, in the agreement to pay off the default judgment. Because there was no relience, a necessary element under Section 523(a)(2)(A), the agreement to pay off the default judgment is not a basis for nondischargeablility of the debt under that section of the Code.

3. Representations made to induce appellants to enter into a lease with the debtors are not the kind of representations that qualify a debt for nondischargeability under Section 523 (a)(2)(A).

4. In order to qualify for nondischar-geability under Section 523(a)(6), damage to property must be property which is collateral for a debt where the debtor destroys or damages that property. Since that is not the case here, it does not

give rise to nondischargeability under Section 523(a)(6).

II. ISSUES PRESENTED

1. Whether the bankruptcy court erred in not giving perclusive effect to the default judgment with regard to the elements of nondischargeability under Section 523(a)(2)(A) and (a)(6).

2. Whether the bankruptcy court otherwise erred in finding the debt in question to be dischargeable.

III. STANDARD OF REVIEW

Questions of law and statutory inter-pretation are reviewed de novo by the appellate court. In re Hill, 811 F.2d 484, 485-486 (9th Cir. 1987). The avail-ability of collateral estoppel is a mixed question of law and fact wich the appeaalte court reviews de novo. Eilrich v. Remas, 839 F.2d 630 (9th Cir. 1986). If collater-al estoppel is determined to be available,

the appellate court reviews the bankruptcy court's decision on whether to give perclu -sive effect to the determination of the LOs Angeles County Municipal Court for abuse of discretion. Id. The issue of justifiable relience is a question of fact subject to the clearly erroneous standard of review. In re Kirch, 973 F.2d 1454 (9th Cir. 1992).

IV. DISCUSSION

A. Dischargeability Under Section 523 (a)2)(A)

11 U.S.C. Section 523(a)(2) provides:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt-
>
> (2) for money, property, services, or an extension, renewal, or refin -ancing of credit, to the extent obtained by -
>
> (A) false pretenses, a false repre -sentation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;
> (B) use of a statement in writing -- (i) that is materially false;

> (ii) respecting the debtor's or an insider's financial condition;
> (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
> (iv) that the debtor caused to be made or published with intent to deceive.

In order to establish fraud under section 523(a)(2)(A), a creditor must prove that: (1) the debtor made a material misrepresentation, (2) with knowledge of its falsity, (3) with the intent to deceive, (4) on which the creditor justifiably relied, and (5) due to which the creditor sustained loss or damage. In re Kirsh, 973 F.2d 1454, 1457 (9th Cir. 1992).

1. Preclusive Effect of Default Judgment

> The perclusive effect of a state court judgment in a subsequent federal lawsuit generally is deter-mined by the full faith and credit statute, which provides that state judicial proceedings 'shall have the same full faith and credit in

> every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken'. Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995).

Since the default judgment was taken in California, we examine California law to determine its perclusive effect. In California, "[a] default judgment conclusively establishes, between the parties so far as subsequent proceedings on a different cause of action are concerned, the truth of all material allegations contained in the complaint in the first action, and every fact necessary to uphold the default judgment; but such judgment is not conclusive as to any defense or issue which was not raised and is not necessary to uphold the judgment." Four Star Electric, Inc. v. F & H Construction, 10 Cal. Rptr.2d 1, 3 (Ca.Ct.App. 1992).

The bankruptcy court held by impli-

cation that the default judgment obtained by the appellant could collaterally estop the debtors, but that it had no perclusive effect respecting the elements of false pretense, false representation or actual fraud necessary to find the debt nondischargeable under section 523 (a)(2)(A) because those elements were not necessary to the default judgment obtained. Since there were no recitation of fraud or fraudulent intent in either the default judgment or the underlying complaint, and those elements were not necessary to the judgment, the bankruptcy court did not abuse its discretion by refusing to give perclusive effect to the judgment as to those elements.

2. **Debtors' Agreement to Pay Default Judgment**

The Court held that no representation had been made respecting debtors' intention or ability to pay. In addition,

there were no damages suffered by the appellants because they were not percluded by the agreement from exercising their legal rights. The Bankruptcy court did not abuse its discretion in holding that the agreement in question did not prove a basis for declaring the debt nondischargeable, or itself create a nondischargeable obligation.

3. **Misrepresentation in Lease Application**

Appellants claim that misrepresentations made in Debtor's lease application induced them to let their property, and that their claim for unpaid rent is there-fore not dischargeable under Code Section 523(a)(2)(A). The bankruptcy court held that misrepresentations which lead someone to enter into a lease are not of the sort that give rise to nondischargeability under Section 523(a)(2)(A). In light of that holding, the court did not make

findings of fact with respect to the elements of the applicable Code section.

Bankruptcy courts have treated leases as property for purposes of section 523(a)(2) with the resulting debt for breach of the lease subject to the dischargeability provisions of Section 523(a)(2).[5] See In re O'Connor, 145 B.R. 883, 887-891 (Bankr. W.D. Mich. 1992); Landmark Leasing Inc. v. Martz (In re Martz), 88 B.R. 663 (Bankr. E.D. Pa. 1988). Damages -- such as unpaid rent -- may be non-dischargeable when possession of the property is obtained by misrepresentation. In this case, however, the record contained no

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5 While the definition of property for purposes of Section 523(a)(2) is a matter of federal law, California courts have also defined leases as property. See Banks v. Housing Authority of San Francisco, 120 Cal.App.2d 1, 16, 260 P.2d 668, 677 (1953) ("housing authority 'creates' property interests whenever it executes a lease with an applicant for one of its dwelling units.")

evidence establishing that Debtors Inten-tionally misled appellants. Absent such proof,[6] the debt must be discharged.

The failure of a trial court to enter explict findings does not require reversal if a full understanding of the question presented may be had without the aid of separate findings. Magna Weld Sales Co., Inc. v. Magna Alloys and Research Pty. Limited, 545 F.2d 668, 671 (9th Cir. 1976); Federal Trade Commission v. H. N. Singer, Inc., 668 F.2d 1107, 1109 (9th Cir. 1982). Where it is clear from the record that an essential element of a claim has not been established, the trial court may be affir-med even in the absence of explict find-ings to that effect.

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6 Appellants do not discuss the applica-bility of Section 523(a)(2)(B), concern-ing the use of a false writing. Since this section also requires proof that the debtor intended to defraud, the outcome would not be different in this case.

B. Dischargeability Under Section 523 (a)(6)

Claims for damages for willful and malicious injury to property are excepted from discharge. Code Section 523(a)6). Appellants claimed that Debtors intentionally damaged the leased premises, and presented photographs at trial purporting to show the damages condition of the premises after Debtors were evicted.

The trial court held that Section 523(a)6) extended only to property which secures payment of an obligation. However, Section 523(a)(6) requires only that the injury be to "another entity or to the property of another entity." The injury may be physical or economic. See e. g., In re Long, 774 F.2d 875 (8th Cir. 1985); In re Grey, 902 F.2d 1479 (10th Cir. 1990). Courts have routinely held that injury to property which had not been held as collateral is subject to Section 523

(a)(6). See In re Cecchini, 780 F.2d 1440 (9th Cir. 1986) (embezzlement of hotel funds subject to section 523 (a)(6); In re Hopking, 65 B.R. 967 (Bankr. N.D. Ill, 1986) (conversion of insurance checks subject to section 523(a)(6); Goldzweig v. Winterland Construction Co., 63 B.R. 412 (N.D. Ill. 1986) (damages for illegal production of booting teeshirts subject to Section 523(a)(6); In re Johnson, 125 B.R. 679 (Bankr. M.D. Fla. 1991) (embezz-lement and defalcation of corporation by corporate president subject to Section 523(a)(6).

The damage alleged here is of a type which, if willfully inflicted, would lead to a non-dischargeable claim. However, there is no evidence in the record that Debtors acted willfully, or indeed that the Debtors are actually responsible for the damage. It follows that the claim

under section 523(a)6) cannot stand on this record.

V. CONCLUSION

Appellants failed to sustain their burden of proof at trial. For that reason, the Judgment of the Bankruptcy Court is AFFIRMED.

I.

STATEMENT OF JURISDICTION

Jurisdiction of the Bankruptcy Appel -late Panel ("BAP") for the Ninth Circuit arose out of and was based on 11 U.S.C. Sections 523(a)(2)(A), 523 (a)(6), and 727 (a)(4)(A).

The BAP in its Memorandum, filed on August 30, 1996, affirmed the Bankruptcy Court's judgment granting defendants'[1] discharge of their debts (EX. 19).[2]

Said Memorandum was filed on August 30, 1996. Plaintiffs filed their "Notice of Appeal" on September 19, 1996 (EX 20). Said notice was timely according to Fed. R.App.P. 4(a)(1).

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[1] Plaintiffs/Appellants will be referred to herein as "Plaintiffs" and Defendants/ Appellees as "Defendants".

[2] References to "EX__" are to Exhibits and "p. ___" are to page(s) in the Excerpts of Record filed concurrently herewith.

This Court has jurisdiction pursuant to 28 U.S.C. Section 158(d), in that, Memorandum was entered on August 30, 1996.

II.

ISSUES ON APPEAL

1. WHETHER THE AGREEMENT WAS DATED ON AUGUST 26, 1994 AND HAS THE SAME EFFECT AS "STIPULATED JUDGMENT"

2. WHETHER THE AGREEMENT SIGNED BY DEFENDANTS AND PLAINTIFFS PROVIDED CONSIDERATION, OR RESTRAINED PLAINTIFFS FROM EXECUTING ON THE JUDGMENT OR TAKING OTHER STEPS TO COLLECT IT

3. WHETHER DEFENDANTS FALSELY REPRESENTED THEIR INCOMES AND OTHER INFORMATION ON THE "TENANT APPLICATION"

4. WHETHER THE STATE COURT'S JUDGMENT THAT DEFENDANTS PAY THE DAMAGES TO REPAIR THE HOUSE HAVE THE COLLATERAL ESTOPPEL EFFECT

5. WHETHER THE FACTS AND EVIDENCE PRESENTED IN THE INSTANT CASE HAVE PROVED THAT DEFENDANTS ARE NOT HONEST PEOPLE AND ARE NOT ENTITLED TO HAVE ANOTHER FRESH START

6. WHETHER DEFENDANTS SHOULD BE DENIED A DISCHARGE PURSUANT TO SECTION 727 (a)(4)(A)

III.

STANDARD OF REVIEW

The Appellate Court is asked to review 1) the decision of the Bankruptcy Court independently (In re Dominquez, 51 F3d 1503 (9th Cir. 1995)), 2) the Bankruptcy Court's judgment granting defendants' discharge of debts de novo (In re Kirsh 973 F2d 1454 (9th Cir. 1992)), and 3) the Bankruptcy Court's findings of fact under clearly erroneous standard (In re Jogert, Inc. 950 F2d 1498 (9th Cir. 1991)).

IV.

STATEMENT OF THE CASE

A. Procedural History:

1. On October 10, 1995, plaintiffs filed a "Notice of Appeal" appealing the Bankruptcy Court's judgment that defendants' debts are dischargeable (EXs. 8, 9, 10).

2. On October 18, 1995, plaintiffs

filed the "Designation of Records on Appeal" and the "Statement of Issues to be presented on Appeal" (EXs 11, 12).

3. On or about February 20, 1996, the "Appellants' Opening Brief" and the "Appellants' Excerpts of Record" were filed (EXs. 17, 18).

4. On August 30, 1996, the BAP's Memo-randum was filed (EX. 19).

5. On September 19, 1996, plaintiffs filed a "Notice of Appeal" appealing the BAP's Memorandum (EX. 20).

B. Statement of Facts

1. Defendants had knowingly, repeated-ly, and maliciously given false informa-tion on their "Tenant Application" Form (EX. 7, pp. 27, 27A, 28).

2. Defendants had knowingly, repeated-ly, and unlawfully used a 6-year old child to obtain utilities services (EX. 7, pp. 27, 44, 45).

3. Defendants had falsely stated the cost of mail box renting was $1,050.00 per month (EX. 7, p. 27A; EX. 22, p. 133 - Schedule J).

4. Defendants had listed their income of $2,400.00 per month (EX. 22, p. 132) while defendant Charles Brown's ("Brown") employer stated his income was $722.92 weekly (EX. 7, p. 40).

5. Defendants had repeatedly failed to pay rents while they were living luxuriously (EX. 7, pp. 46, 47, 124, 125, 126, 127).

6. Defendants had repeatedly written checks with no money in the account (EX. 7, pp. 48 thru 52).

7. The Agreement signed by defendants and plaintiffs was dated August 26, 1994 (EX. 7, p. 36).

8. Defendants were not making enough incomes when they falsely and knowingly

stated that he was making $2,900.00 per month, that she was making $6.00 per hour, and that they had other income of $400.00 a month (EX. 7, p. 27).

9. Defendants had knowingly and fraudulently used their mailing address (?) as residence street address (EX. 7, pp. 27, 27A, EX. 22, p. 132A).

V.

DISCUSSIONS

1. THE AGREEMENT WAS DATED ON AUGUST 26, 1994 AND HAS THE SAME EFFECT AS "STIPULATED JUDGMENT"

The BAP erred when it stated that the Agreement signed on August 26, 1994 was undated (EX. 7, p. 36).

In re Cheryl Bowen, 96 Daily Journal DAR 12575 (October 17, 1996), the BAP held that:

> "the debt reflected in the Bowen Stipulated Judgment shall not be dischargeable in Bankruptcy and acknowledge that they are waiving

their right to a Bankruptcy Discharge for the obligation recognized and/or acknowledged in the Bowen Stipulated Judgment."

The BAP further held that:

"the Bankruptcy Court concluded that the pre-petition Stipulated Judgment against Bowen was entitled to collateral estoppel effect, and held that Genel (Creditor) had satisfied elements of Section 523 (a)(2)(A)."

"the Ninth Circuit Court of Appeals holds that a default judgment can have collateral estoppel effect when determining the discharge-ability of a debt."

In Direct Mail Specialist, Inc. v. Echt Computerized Technologies, Inc. (9th Cir. 1988) 840 F2d 685, Admiral Home Appliances v. Tenavision, Inc. (D NJ 1982) 585 F.Supp.14, the courts held that:

"Relief will not be granted if it appears defendant received notice of the action, was aware of its consequences and simply failed to respond."

In the instant case, defendants were not only served the "Unlawful Detainer"

complaint (EX 7, pp. 30 - 34), defendants had also received Notice of the "Unlawful Detainer" action from the Pomona Municipal Court (EX. 16. p. 92). Thus, the Bankruptcy Court and the BAP erred in ignoring these facts.

The reason that defendants did not answer the "Unlawful Detainer" action was because defendants could not deny the fact that defendants owed rents and had no ability to pay.

Moreover, defendants did not take any action after defendants were notified by the Los Angeles Sheriff to evict them from the house (EX. 15).

On August 26, 1994, defendants signed the Agreement and agreed to the terms of the Agreement, because 1) defendants knew plaintiff could and would have the Orange County Marshal garnish defendant Brown's wage and 2) defendants were playing delay

-ing tactics.

In the Agreement (dated on August 26, 1994, the BAP erroneously stated it was undated (P. 110, lines 18, 19)), defeandants agreed to pay $400.00 per month to plaintiffs. At the time the Agreement was signed, defendants' intention was to delay defendants' filing of their Chapter 7 Petition. Defendants did not have any intention to pay the judgment.

Ample evidence have shown <u>that</u> defen-dants would certainly not to file defendants' Bankruptcy Petition if plaintiffs had not asked the Orange County Marshal to garnish defendant Brown's wage and <u>that</u> defendants' intention was to defeat State Court's judgments.

2. THE AGREEMENT SIGNED BY DEFENDANTS AND PLAINTIFFS PROVIDED CONSIDERA-TION, OR RESTRAINED PLAINTIFFS FROM EXECUTING ON THE JUDGMENT OR <u>TAKING OTHER STEPS TO COLLECT IT</u>

In the BAP's Memorandum, the Panel

erred when it stated that the Agreement (EX. 7, p. 36) did not provide considera-tion (EX. 10, p. 110, lines 20 thru 22).

As the Agreement demonstrates, the Agreement provide many considerations:

1) the Agreement allowed defendants to pay the State court's judgment, if defendants had the intention to do so, based on defendants' ability to pay;

2) the Agreement allowed defendants to pay the State court's judgment on the dates convenient to defendants;

3) the Agreement provided that defen-dants would pay attorneys fees and court costs if defendants failed to honor the terms of the Agreement.

As the Agreement demonstrates, plain-tiffs did not have to be restrained so long as defendants pay the judgments. Because defendants did not pay the judgment and had no intention to do so,

defendants, finally, filed their Chapter 7 Bankruptcy Petition ONLY after defendant Brown's employer was served the "Earnings Withholding Order" on October 16, 1994 (EX. 7, p. 40).

3. DEFENDANTS HAD FALSELY REPRESENTED THEIR INCOMES AND OTHER INFORMATION ON THE "TENANT APPLICATION"

On August 6, 1993, defendants filled out a "Tenant Application" form (EX. 7, p. 27) and gave many false information:

1) Present Address - 382 N. Lemon, Walnut, CA 91789

2) How Long - 3 years

3) Reason for Leaving - To have a place of my own

4) Name and Address of Owner or Owner's Agent - Jurline Thomas. 1-800-99 flows

5) Salary (Charles Brown) - $2900 per month

6) Janette Brown's Present Employer - J. C. Penny; How Long - 2 mo; Salary - $6 per hour

7) Other Income - $400 per month.

As Exhibit 7 (p. 27A) demonstrates, defendants had knowingly, falsely, and fraudulently misstated, distorted, and misrepresented the above-referenced Nos. 1 thru 4.

As Exhibit 7 (p. 43) and Exhibit 22 (pp. 132, 134 thru 136) demonstrate, defendants had knowingly, falsely, and fraudulently misstated, distorted, and misrepresented the above-referenced Nos. 1 thru 7.

The afore-said facts and evidence not only proved plaintiffs' allegations in the complaint were true, they also proved defendants' bad intention to defraud plaintiffs so that defendants could obtain possession of the house. Thus, defendants'

debts are non-dischargeable (Landmark Leasing, Inc. v. Martz (In re Martz) 88 B.R. 663).

4. THE STATE COURT'S JUDGMENT THAT DEFENDANTS PAY THE DAMAGES TO REPAIR THE HOUSE HAVE THE COLLATERAL ESTOPPEL EFFECT

In re Silva 190 B.R. 889, 892 (9th Cir. 1995), Montana 440 U.S. at 147, the courts held that:

> "Once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party of the prior litigation."

As Exhibit 7, p. 28 depicts, defendants rented the house on a month-to-month tenancy begining August 8, 1993.

As Exhibit 15, pp. 88 thru 90, demonstrate, defendants were evicted from the house on August 4, 1994.

On September 6, 1994, the Pomona Municipal Court, after trial, awarded

judgment to plaintiffs after the State court found damages done to the house by defendants were willful and malicious during defendants' about 12-months renting. The fact that defendants abandon -ed defendants' appeal of the judgment clearly proved the state court's findings that defendants should pay for damages they did willfully and maliciously (EX. 7, pp. 37 - 39).

5. THE FACTS AND EVIDENCE PRESENTED IN THE INSTANT CASE HAVE PROVED THAT DEFENDANTS ARE NOT HONEST PEOPLE AND ARE NOT ENTITLED TO HAVE ANOTHER FRESH START

In re Kim (9th Cir. BAP 1994) 163 B.R. 157, the BAP held that Bankruptcy Discharge provisions are generally intende to provide fresh start only for honest but unfortunate debtor.

In the facts and evidence presented to the Bankruptcy Court, the BAP, and to this Court, there are numerous facts and

evidence proved that defendants are not honest people and are not entitled to another fresh start at expenses of plain -tiffs. For Example:

1. defendants did not have the ability to pay the rent when they applied for renting the house (EX. 18, pp. 99; EX. 22, pp. 132, 134 - the monthly rent was $1250.00 per month. It is well estab -lished law in California that defendants must have more than $3,600.00 incomes per month in order to be eligible for consid- eration. The evidence, shown on pp. 99, 132, and 134, have clearly shown that defendants' inability to pay the rents).

2. Defendants knew they could not obtain any utilities' services and, there -fore, falsely, unlawfully, and fraudulent -ly used a 6-year old child to apply for utilities. (EX. 7, pp. 44, 45).

3. Defendants knew they did not have

the money in the Bank. Yet, defendants repeatedly wrote NSF checks to pay the rents (EX. 7, pp. 48 thru 52).

4. Defendants knew they did not have the incomes to pay the rents. Yet, defen-dants would not move out the house until after the Los Angeles Sheriff evicted them (EX. 15, pp. 88 - 90).

5. Defendants knew they did not have the money to pay the rent. Yet, defen-dants would spend over $14,000.00 to lease a new pick-up (EX. 22, pp. 125, 127, 131).

6. Defendants had the benefits of the Bankruptcy Act in 1983 (EX. 22, p. 137). Yet, defendants did not restrain their living standards and avoid to cause damages to plaintiffs.

In re Kirsh, 973 F2d 1454, 1457 (9th Cir. 1992), the court held that "the debtors' debts will not be discharged if

the creditor can prove that: (1) the debtor made a material misrepresentation, (2) with knowledge of its falsity, (3) with the intent to deceive, (4) on which the creditor justifiably relied, and (5) due to which the creditor sustained loss or damage."

As plaintiffs had stated in Paragraph 3 in this Discussion, defendants' acts and conduct clearly shown defendants have no rights to, again, receive another Bankruptcy benefits to discharge their debts which were incurred due to their fraud in renting the house.

6. DEFENDANTS SHOULD BE DENIED A DISCHARGE PURSUANT TO SECTION 727 (a)(4)(A)

In Farouki v. Emirates Bank Intern, LTD. (4th Cir. 1994), 14 F3d 244, 250, the court held that:

"A party objecting to discharge need prove any one of the grounds for

non-dischargeability under section 727(a) because the provisions of section 727(a) are phrased in the disjunctive. Proof of conduct satisfying any one of the subsection is enough to justify a denial of a debtor's request for a discharge. In In re Shumate, 55 B.R. 459 (Bankr W.D. Va. 1985)."

Section 727 (a)(4)(A) provides that debtors should be denied a discharge if debtors knowingly and fraudulently made false oath and/or account.

In the instant case, defendants not only had made false oath, they had also made false account:

1. 382 N. Lemon, Walnut, CA 91789 has never been their address (EX. 7, pp. 27, 27A; EX. 22, p. 132A - Form 1 - Voluntary Petition's First Page)

2. defendants had moved many times. Defendants had failed to list all places they lived (EX. 7, pp. 44, 45; EX. 22, p. 136, no. 15).

3. defendants stated they had/have

$400.00 other income per month. But they did not list on their Petition (EX. 7, p. 27; EX. 22, p. 135, no. 2).

4. defendants stated they sold their house about 6 years ago. They did not say WHERE was the house on the "Tenant Application" form (EX. 7, p 27).

5. defendants failed to list correctly a) all claims of creditors on Schedule F (EX. 22, pp. 128 thru 131), b) Incomes and Expenditures on Schedules I, J (EX. 22, pp. 132 thru 133 - on p. 40, defendant Brown's Employer stated defendant Brwon's weekly earnings was $722.92. On Schedule I, defendants only listed monthly income of $2,400.00, which was about $500.00 less per month. On Schedule J, defendants listed Rent Payment or Mortgage Payment at $1,050.00 per month. The mail box they rented (?) at 382 N. Lemon. Walnut, CA surely would not cost that much).

6. defendants had falsified their debts on Schedule F (EX. 22, pp. 128 thru 130).

In re: Fred H. Arm 96 Daily Journal DAR 7303 (June 24, 1996), the court held that the indirect benefits to the debtor from a fraud in which he participates is sufficient to prevent the debtor from receiving the benefits that Bankruptcy law accords to honest person". See In re Ashley 903 F2d 599, 604 n. 4 (9th Cir. 1990).

Since defendants had knowingly and fraudulently made false oath and account on the "Tenant Application" and on their Chapter 7 Petition, the court should deny discharge of defendants' debts.

VI.

CONCLUSION

In re Kim, Supra, the BAP held that when "the statute's language is plain,

'the sole function of the court is to enforce it according to its terms'''. United States v. Ron Pair Enterprises, Inc. 489 U.S. 235, 241, 109 S.Ct. 1026, 1030.

It is clear that 1) debts of defendants are non-dischargeable, because defendants obtained the house by false pretense and false representation, 2) debts of defendants caused by their will-ful and malicious acts and conduct are non-dischargeable, and 3) debtors should be denied a discharge because defendants had knowingly, falsely, and fraudulently made oath and account on the "Tenant Application" form and their Chapter 7 Bankruptcy Petition when they knew the oath and account were false.

In the interest of justice and the integrity of judicisl process, the court should vacate the Bankruptcy Court's

judgment and issue an order ordering the Bankruptcy Court deny defendants' discharge of their debts.

DATED: December 24, 1996

/S/

Stanley Ma, Jenny Tong, Wai K. Choi
Appellants Pro Se

Exhibit

1. Complaint to Determine Exception to Discharge, 1/20/95 1

2. Answer to Complaint for Adversary Proceeding, 2/6/95 8

3. Plaintiff's letter to defendants re Meeting to prepare Status Conference Report, 2/21/95 11

4. Declaration of Stanley Ma re Joint Status Report, 3/15/95 12

5. Joint Status Report, 3/15/95 15

6. Plaintiffs' Trial Brief, 9/28/95 20

7. List of Trial Exhibits, 9/28/95 25

8. Reporter's Transcript, 9/28/95 54

9. Judgment, 9/28/95 74

10. Notice of Appeal, 10/10/95 76

11. Desigantion of Records on Appeal, 10/18/95 77

12. Appellants' Statement of Issues to be presented on Appeal, 10/18/95 79

13. Docket Sheet 81

14. Money Judgment, Case No. 94C02490, Los Angeles Municipal Court, Pomona Judicial District, 8/12/94 83

Declaration in support of default judgment for damages and costs

Application for Money Judgment

15. Writ of Possession of Real Property, Case No. 94C02490, 7/21/94 88

Los Angeles County Sheriff's Notice of Enforcement of Eviction, 7/29/94

16. Register of Actions, Case No. 94C02490 92

Exhibits 1 thru 16 are the same Exhibits submitted to the BAP. The purposes are for this Court to review whether Appellants had submitted enough evidence supporting appellants' statements that debtors were not honest and had defrauded appellants

17. Appellant's Excerpts of Record, Cover Page & List 93

18. Appellant's Opening Brief 94

19. BAP's Memorandum, 8/30/96 109

20. Notice of Appeal, 9/19/96 118

21. General Docket, BAP 119

22. Schedules B, D, F, G, I, J 124
Form 7 - Statement of Financial Affairs (showing debtors' false statements)

Local Rule 104 Information 137

STATEMENT OF JURISDICTION

This appeal is brought pursuant to 28 U.S.C. Section 158(D) and arose from the judgment rendered by the trial court on September 28, 1995 in favor of defendants[1] and ordered that the defendants are entitled to discharge of debts (AE 74,75).[2]

This Court has jurisdiction of this appeal under 28 U.S.C. Section 158.

ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in discharging of defendants' debts when defendants acted with intent to injure plaintiffs.

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[1] Appellants Wai K. Choi, Stanley Ma, and Jenny Tong will be referred to herein as "Plaintiffs" and Appellees Charles W. Brown and Janette Brown as "Defendants".

[2] Appellants' Excerpt of Record arranged in chronological sequence and tagged as Exhibits 1 thru 16. References to "AE__" are to pages of Excerpt of Record.

2. Whether the Bankruptcy Court erred in discharging of defendants' debts, which were default judgment.

3. Whether the Bankruptcy Court erred in discharging of defendants' debts when the debts were incurred due to defendants' fraudulent and malicious acts and conduct.

4. Whether the Bankruptcy Court erred in discharging of defendants' debts when defendants had willfully, fraudulently, and maliciously presented false information to plaintiffs.

STANDARD OF REVIEW

The BAP review the Bankruptcy Court's conclusions of law de novo and its findings of facts under the clearly erroneous standard. In re The Two "S" Corp. v. Romley 875 F.2d 240 (9th Cir. 1989).

STATEMENT OF THE CASE

A. Procedural History:

On August 26, 1994, defendants made

an Agreement with plaintiffs. Defendants promised to pay the State Court's judgment at $400.00 or more a month starting September 30, 1994 (AE 36).

On September 6, 1994, The Pomona Municipal Court awarded judgment of $515 to plaintiffs for damages caused by defendants' failures to maintain and keep plaintiffs' house in clean and healthy conditions (AE 37, 38, 39).

After defendants failed to pay the monthly installment as agreed and ignored plaintiffs' requests to discuss, the "Writ of Execution (Money Judgment)" (AE 35) and the "Application for Earnings Withholding Order" were submitted to the Orange County Marshal (AE 40), who served the afore-said Writ and Order on defendant Charles W. Brown's Employer - Lucky Stores, Inc. - on October 16, 1994.

Immediately thereafter, defendants

filed their Chapter 7 Petition (They had filed a Chapter 7 Petition in 1983; AE 41).

On January 20, 1995, the "Complaint to Determine Exception to Discharge" was filed (AE 1, Exhibit 1).

On or about February 6, 1995, defendants filed their "Answer to Complaint for Adversary Proceeding" (AE 8, Exhibit 2).

On or about February 21, 1995, a letter re the meeting of plaintiffs and defendants was sent to defendants (Exhibit 3; AE 11, 12). Defendants did not respond to plaintiffs' letter (AE 12 thru 14).

On March 23, 1995, during the Status Conference, the trial court set the trial date on September 28, 1995, in spite of the fact that plaintiffs had submitted their "Status Report" (AE 15 thru 19; Exhibit 5) re the Discovery Requests.

On September 28, 1995, the trial of the instant case was held. The trial court rendered its judgment in favor of defendants and ordered that "the defendants are entitled to discharge of this debts" (AE 20 thru 75; Exhibits 6 thru 9).

On October 10, 1995, plaintiffs filed a "Notice of Appeal" appealing the trial court's judgment (AE 76; Exhibit 10).

B. Statement of Facts:

1. Defendants filed a Chapter 7 Petition in 1983 (AE 41).

2. Defendants had falsely and fraudulently stated their incomes as follows when they applied for renting of plaintiffs' house - -

a) Charles W. Brwon, $2,900.00 a month;

b) Janette Brown, $6.00 per hour; and

c) Other income, $400.00 per month

(AE 27)

while they actually had incomes as

follows (AE 43):

i) $25,000.00 in 1992 (i.e., $2,083.33/Month);
ii) $29,000.00 in 1993 (i.e., $2,416.66/Month);
iii) $24,000.00 in 1994 (i.e., $2,000.00/Month).

3. Defendants had falsely and fraudu -lently obtained their utilities by using the name of Gregory Burns, who was/is a 6-year old child (AE 27, 44, 45).

4. Defendants had very bad Credit History (AE 29).

5. Defendants had repeatedly issued bad checks to plaintiffs (AE 48 thru 52).

6. Defendants were served the "Notice to Pay Rent or Quit" and the "3-Day Notice to Perform Covenant or Quit" (AE 33, 34).

7. Defendants were served the "Complaint - Unlawful Detainer" after they failed to pay rents and failed to move out (AE 30, 31, 92; Exhibit 16 - Register of Action).

8. On August 4, 1994, defendants were evicted from the premise by the Los Angeles Sheriff after defendants did not respond to the Complaint (AE 84, 85, 88 thru 92; Exhibit 15).

9. On August 12, 1994, Money Judgment was awarded by the State Court to plaintiffs (AE 35, 83 thru 87; Exhibit 14).

10. On August 26, 1994, defendants made an Agreement with plaintiffs promising to pay $400.00 or more per month for the money judgment (AE 36).

11. On September 6, 1994, the Pomona Municipal Court ordered defendants to pay damages in the amount of $515.00 caused by the defendants (AE 37). The judgment was affirmed by the Los Angeles Superior Court, Pomona Branch, after defendants' appeal (AE 39).

12. Defendant Charles W. Brown's Employer - Lucky Stores, Inc. - was served

the "Writ of Execution (Money Judgment)" and the "Application for Earings Withhold -ing Order" after defendants failed to pay the monthly payments as promised (AE 35, 36, 40).

13. Defendants filed their Chapter 7 Petition after the Orange County Marshal was garnishing defendant Charles W. Brown's wage and after defendants failed to honor their promise.

DISCUSSIONS

I.

The Bankruptcy Court Erred In Discharging Of Defendants' Debts When Defendants Acted With Intent To Injure Plaintiffs

In re Cunningham, 163 B. R. 657 (Bkrtcy D.Mass, 1994), the court held that:

> "For purposes of exception to discharge for use of materially false written financial statement, intent to deceive may be inferred where debtor knew or should have

known of falsity of his financial statement." (Bankr.Code 11 U.S.C.A. Section 523(a)(2)(B)

"For purposes of exception to discharge for use of materially false written financial statement, Chapter 7 debtor had intent to deceive when he submitted false financial statement to Bank, . . ." (Bankr.Code 11 U.S.C.A. Section 523(a)(2)(B)

" . . . took statement into account and gave it some weight, which in turn was sufficient to show that Co-Obligator relied on false statement of purposes of exception to discharge for use of false financial statement." (Bankr.Code 11 U.S.C.A. Section 523(a)(2)(B)

In the instant case, plaintiffs have presented evidence and fact to show that (1) a representation of false fact by defendants; (2) that was material; (3) that defendants knew at the time to be false; (4) that defendants made with intention of deceiving plaintiffs; (5) upon which plaintiffs relied; (6) that plaintiffs' reliance was reasonable and

justifiable; and (7) that damages proximately resulted from their misrepresentations.

In Farauki v. Emirates Bank Intern. LTD., 14 F.3d 244 (4th Cir. 1994), the court held that:

> "Court did not have to consider all of the grounds alleged in creditor's complaint for denials of debtor's discharge, once any one of the grounds was established by preponderance of evidence; proof of conduct satisfying any one of the statutory subsections was enough to justify denials of debtor's discharge."

> "Chapter 7 debtor would be denied discharge for knowingly and fraudulently make false oaths or accounts . . . ."

In Re Cecchini 780 F.2d 1440 (9th Cir. 1986), the court held that:

> "When a wrongful act done intentionally necessarily produces harm and is without just cause or execuse, it is 'willful and malicious' for purposes of statute barring discharge due to willful and malicious injury even absent proof of a specific intent to injure."

> "An injury to an entity or property may be a malicious injury within this provision if it was wrongful and without just cause or excessive, even in the absence of personal hatred, spite, or ill-will. The word 'willful' means 'deliberate or intentional', a deliberate and intentional act which necessarily leads to injury. Therefore, a wrongful act done intentionally, which necessarily produces harm and is without just cause or execuse, may constitute a willful and malicious injury."

As AE 27, 29, and 43 demonstrate, defendants knew they did not have enough incomes to pay the rent when they filled out the "Tenant Application" form. Defen -dants had willfully and falsely stated their incomes. Thus, the trial court err -ed in discharging of defendants' debts.

II.

The Bankruptcy Court Erred In Dis -charging Of Defendants' Debts, Which Were Default Judgment

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In Re Daghighfekr, 161 B. R. 685 (9th Cir.BAP 1993), the court held that:

> "default judgment entered in plaintiff's state court action could be given preclusive effect, at least on question of amount of damages resulting from debtor's acts."
>
> "All liabilities resulting from debtor's willful and malicious injury to person or property of another, . . ., are debtor's liability excepted from discharge."

Section 523(a)(6) bars from discharge liability on a claim for willful and malicious injury.

In Re Adams, 761 F.2d 1422 (1985), the court held that:

> "the terms 'willful' and 'malicious' meant only the intentional doing of a wrongful act with knowledge of its proable consequences."

As AE 92 shows, defendants not only were served plaintiffs' "Complaint - Unlawful Detainer", defendants had also received the Pomona Municipal Court's Notices of the Unlawful Detauner Complaint.

As AE 38 depicts, defendants knew

the procedures to appeal a court judgment. The fact that they did not take any action in the Unlawful Detainer action if they alleged they were not served clearly shown they lied to the trial court during the trial.

As AE 36 shows, defendants not only had agreed to the sum of the State Court's judgment, defendants had also promised to pay.

Since defendants' debts were default judgment and they had never contested the money judgment, therefore, the trial court erred in discharging of defendants' debts when defendants' debts were resulting from defendants' willful and malicious acts.

III.

The Bankruptcy Court Erred In Discharg -ing Of Defendants' Debts When The Debts Were Incurred Due To Defendants' Fraudulent And Malicious Acts And Conduct

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In Re Kim, 163 B. R. 157 (9th Cir.BAP

1994), the court held that:

> "Bankruptcy discharge provisions are generally intended to provide fresh start only for honest but unfortunate debtor."
> (Bankr Code, 11 U.S.C.A. Section 523)

Section 523 (a)(2) provides that the debtor cannot discharge debt:

> "(A) false pretenses, a false representation or actual fraud . . . .
>
> (B) use of a statement in writing -
>
> (i) that is materially false
> (ii) . . . .
> (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied;"

> "The section clearly excepts a debt incurred bb an extension of credit which the debtor obtains through fraudulent means."

> "A logical reading of the plain language of the statute shows that if a creditor suffers damages, the proximate cause of which is the fraud of the debtor in obtaining an extension of credit, then the creditor should be able to prevent the debt from being discharged.

See generally In Re Britton 950 F.2d 602, 604 (9th Cir. 1991). This reading is consistent with the general policy that the discharge provisions are only intended to provide a fresh start for the honest but unfortunate debtor. Britton, Id. at 606

In re Cunningham, 163 B. R. 657 (Bkrtcy D.Mass, 1994), the court held that:

"Debtor need not actually procure money or services for himself, and if debtor benefits in some way from money obtained through his deception, debt is not discharge-able." (Bankr.Code 11 U.S.C.A. Section 523 (a)(2)(B)

In Re Nourbakhsh, 95 Daily Journal, DAR 12971, the court held that:

"Section 523 exempts from discharge all debts for money obtained through fraud."

In Coen v. Zick, 458 F.2d 326 (9th Cir. 1972), the court held that:

"The statutory exception which measures nondischargeability is '. . . for liabilities . . . for willful or malicious injuries to the person or property of another'.

> The exception is measured by the nature of the act, i.e., whether it was one which caused willful and malicious injuries. All liabilities resulting therefrom are nondischargeable."

In Re Littleton, 942 F.2d 551 (9th Cir. 1991), the court noted that:

> "The BAP read 'the word necessarily produces harm' to mean that the act must be targeted at the creditor, at least in the sense that the act is certain or almost certain to cause financial harm." at p. 555.

The court further noted that:

> "Under the ruling of the BAP, an act is targeted at the creditor, if the predictable result of the debtors' intentional act would almost certain -ly be harmful to the creditor."

In the instant case, AE 27, 28, and 43 can show defendants knew that the monthly rent for renting plaintiffs' house would be $1,250.00 per month, that defendants' incomes were only $2,416.66 per month, and that the minimum income to be eligible for renting the house would at least be $3,750.00.

Since defendants had falsified their incomes (2900 + 400 + 6/Hr) and defendants' debts were incurred due to defendants' fraudulent and malicious acts and conduct, thus, the trial court erred in discharging of defendants' debts.

IV.

The Bankruptcy Court Erred In Discharging Of Defendants' Debts When Defendants Willfully, Fraudulently, And Maliciously Presented False Information To Rent Plaintiffs' House

In Re Kim, 163 B.R. 157 (9th Cir.BAP 1994), the court held that:

> "Bankruptcy discharge provisions are generally intended to provide fresh start only for honest but unfortunate debtor." (Bankr.Code, 11 U.S.C.A. Section 523)

In Farauki v. Emirates Bank Intern, LTD., 14 F.3d 244 (4th Cir. 1994), the court held that:

> "Chapter 7 debtor would be denied discharge for knowingly and fraudulently make false oaths or accounts . . . ."

In Re Adams, 761 F.2d 1422 (1985), the court held that:

> "the terms 'willful' and 'malicious' meant only the intentional doing of a wrongful act with knowledge of its proable consequences."

Defendants had filed a Chapter 7 Petition in 1983 (AE 40). They are not honest and unfortunate people as the law intended to give them a fresh start (AE 27, 29, 36, 38, 39, 41 thru 53).

Since plaintiffs had presented ample evidence and facts to prove defendants' dishonest, fraudulent, willful, and malicious acts and conduct in the instant case, the trial court erred in discharging of defendants' debts.

CONCLUSION

In light of the foregoing facts and evidence, plaintiffs respectfully request that this Court vacate the trial court's judgment and enter an order that defen-

dants' debts are not dischargable for the sake of the best interest of justice.

Dated: February 20, 1996

/S/

Stanley Ma, Jenny Tong, Wai K. Choi,
Appellants in Pro Per

Exhibit

1. Complaint to Determine Exception to Discharge, 1/20/95 1

2. Answer to Complaint for Adversary Proceeding, 2/6/95 8

3. Plaintiff's letter to defendants re Meeting to prepare Status Conference Report, 2/21/95 11

4. Declaration of Stanley Ma re Joint Status Report, 3/15/95 12

5. Joint Status Report, 3/15/95 15

6. Plaintiffs' Trial Brief, 9/28/95 20

7. List of Trial Exhibits, 9/28/95 25

8. Reporter's Transcript, 9/28/95 54

9. Judgment, 9/28/95 74

10. Notice of Appeal, 10/10/95 76

11. Desigantion of Records on Appeal, 10/18/95 77

12. Appellants' Statement of Issues to be presented on Appeal, 10/18/95 79

13. Docket Sheet 81

14. Money Judgment, Case No. 94C02490, Los Angeles Municipal Court, Pomona Judicial District, 8/12/94 83

Declaration in support of default judgment for damages and costs

Application for Money Judgment

15. Writ of Possession of Real Property, Case No. 94C02490, 7/21/94

Los Angeles County Sheriff's Notice of Enforcement of Eviction, 7/29/94

16. Register of Actions, Case No. 94C02490